

Message Text

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ACTION ARA-10

INFO OCT-01 ISO-00 SP-02 AID-05 EB-07 NSC-05 CIEP-01

TRSE-00 SS-15 STR-04 OMB-01 CEA-01 INT-05 CIAE-00

COME-00 FRB-03 INR-07 NSAE-00 XMB-02 OPIC-03 LAB-04

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R 232227Z APR 75

FM AMEMBASSY LIMA

TO SECSTATE WASHDC 4858

C O N F I D E N T I A L LIMA 3357

E.O. 11652: GDS

TAGS: BDIS, EIND, EFIN, EMIN, PE

SUBJECT: SETTLEMENT OF CERRO-GOP CLAIMS

REF: LIMA 2595

1. NICOLAS DE PIEROLA BALTA, PERUVIAN LAWYER REPRESENT-
ING CERRO INTERESTS, CALLED ONCE AGAIN AT EMBASSY APRIL 21
TO INFORM US THAT PENNOCK AND RIDGWAY LAST WEEK HAD
REACHED A TENTATIVE AGREEMENT ON THE DISPUTED ZINC SALES
CONTRACTS AND OTHER ISSUES. HE ALSO SAID THAT FINAL
AGREEMENT HAD BEEN REACHED BETWEEN THE DANISH NEGOTIATORS
AND THE GOP ON THE SALE TO THE GOP OF THE "FUNDACION BERA",
A MANUFACTURER OF NONFERROUS ALLOY METALS OWNED JOINTLY BY CERRO
AND DANISH INTERESTS.

2. PIEROLA SAID THAT ON APRIL 17, PRESIDENT VELASCO
SIGNED SUPREME DECREE NO. 002-75 IT/DS APPROVING THE
PURCHASE OF BERA BY THE MINISTRY OF INDUSTRY AND TOURISM
WITH THE INVOLVEMENT OF COFIDE. THE DECREE AUTHORIZES
THE BANCO DE LA NACION TO MAKE AVAILABLE TO THE FOREIGN
SHAREHOLDERS THE PURCHASE SUM OF THE CAPITAL ASSETS OF
THE COMPANY AND SIMUTANEOUSLY AUTHORIZES COFIDE TO
CONTRACT A LOAN WITH A FOREIGN FINANCIAL FIRM IN THE
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SUM OF \$1,660,000 TO MAKE THE PAYMENT. PIEROLA SAID
THAT THIS MECHANISM, WHICH HAD BEEN SUGGESTED BY CERRO,

WAS COMPLETELY ACCEPTABLE TO THE GOP AND THAT THE PURCHASE OF BERA HAS BEEN COMPLETED WITHOUT A HITCH.

3. REGARDING THE ZINC SALES CONTRACTS DISPUTES, PIEROLA EXPLAINED THAT PENNOCK AND RIDGWAY REACHED TENTATIVE AGREEMENT WITH REPRESENTATIVES OF CENTROMIN AND MINPECO ON TWO DOCUMENTS. THE FIRST, IN SPANISH, IS THE BASIC SALES AGREEMENT BETWEEN CENTROMIN, MINPECO AND CERRO SALES CORPORATION. THIS AGREEMENT WOULD COMMIT CERRO SALES TO COMPLY WITH THE TERMS OF ITS SALES CONTRACTS WITH VARIOUS JAPANESE BUYERS, AND ALSO WOULD AUTHORIZE CERRO SALES TO ACT AS THE FUTURE BUYING AGENT FOR MINPECO AND CENTROMIN MINERALS. IT CONTAINS SPECIFIC LANGUAGE UNDER WHICH CERRO SALES WOULD RENOUNCE THE RIGHT TO ASK FOR DIPLOMATIC INTERVENTION IN THE CASE OF A DISPUTE OVER INTERPRETATION OF THE CONTRACT, AND MAKES SPECIFIC REFERENCE AS WELL TO ART. 17 (THE "CALVO DOCTRINE" PROVISION) OF THE PERUVIAN CONSTITUTION. THIS CONTRACT WOULD BE SIGNED IN LIMA.

4. THE SECOND CONTRACT IN ENGLISH IS CALLED A "MODIFICATION AGREEMENT". IT STATES THAT THE PARTIES DESIRE TO SETTLE ALL DISPUTES, NOTES THAT IT AND THE SALES AGREEMENT WOULD ELIMINATE ALL SUCH CLAIMS, AND WOULD MODIFY ALL EXISTING AGREEMENTS BETWEEN MINPECO, CENTROMIN AND CERRO SALES REGARDING SALE OF ZINC AND OTHER METALS. IT ALSO NOTES THAT BASED ON CURRENT INFORMATION, THAT AS OF MARCH 20, 1975, CERRO SALES OWED \$2,386,458.10 TO CENTROMIN AND \$2,516,221.72 TO MINPECO. THE LANGUAGE OF THE AGREEMENT THEN STATES THAT THE PARTIES AGREE TO EXCHANGE DOCUMENTS REGARDING THESE TRANSACTIONS, AND THAT THE ADJUSTED NET AMOUNTS OWED TO CENTROMIN AND TO MINPECO SHALL BE ESTABLISHED PROMPTLY. THE AGREEMENT ALSO CONTAINS THIRD PARTY ARBITRATION CLAUSES, NOTING THAT IT IS AN INTERNATIONAL COMMERCIAL AGREEMENT TO BE EXECUTED AND PERFORMED OUTSIDE THE TERRITORIAL BOUNDARIES OF PERU. ACCORDINGLY, THE PARTIES AGREE THAT DISPUTES ARISING FROM INTERPRETATION OF THE AGREEMENT SHALL BE SETTLED UNDER THE RULES OF CONCILIATION AND ARBITRATION OF THE INTERNATIONAL CHAMBER OF
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COMMERCE. THIS AGREEMENT WOULD BE SIGNED IN GENEVA, SWITZERLAND.

5. PEIROLA SAID THAT IF ALL GOES ACCORDING TO SCHEDULE, RIDGWAY WOULD RETURN TO PERU BY MID-MAY TO SIGN THE SALES AGREEMENT HERE. AT THE SAME TIME, CENTROMIN, MINPECO AND CERRO SALES REPRESENTATIVES WOULD SIGN THE MODIFICATION AGREEMENT IN GENEVA.

6. PIEROLA EXPRESSED PLEASURE AT THIS FAVORABLE

TURN OF EVENTS. HE SAID THAT ALTHOUGH SOME OF THE NEGOTIATING SESSIONS WERE LENGTHY, THEY WERE CONDUCTED IN A BUSINESS-LIKE ATOMSPHERE AND THAT THE GOP HAD OBVIOUSLY DECIDED TO TAKE A "REASONABLE" COURSE WITH CERRO. HE ALSO NOTED THAT, AT MINPECO'S SUGGESTION, CERRO SALES IS NOW CONSIDERING THE POSSIBILITY OF WORKING OUT NEW COPPER BLISTER SALES CONTRACTS.

7. COMMENT: THIS PARTICULAR DEVELOPMENT MAY IN PART REFLECT A GROWING CONCERN BY MINPECO MANAGEMENT ABOUT THE GOP'S OWN LIMITATION IN THE FIELD OF MINERALS SALES. RECENTLY, WELL-INFORMED U.S. MINERALS OFFICIALS INFORMED US THAT THE NEW HEAD OF MINEROPERU, GEN. (RET.) MIRO QUESADA, WHO SPENT LAST YEAR LEARNING ABOUT THE TECHNICAL SIDE OF MINERAL OPERATIONS AS HEAD OF THE RECENTLY NATIONALIZED CERRO DE PASCO MINES, HAS COME TO THE REALIZATION THAT PERU LACKS BOTH THE TECHNICAL EXPERTISE AND PERSONNEL TO EFFECTIVELY OPERATE ITS MINES AND SELL ITS MINERALS. SINCE CENTROMIN HAS A VITAL SUPPLY RELATIONSHIP WITH CERRO PURCHASING CORPORATION, AND MINPECO HAS ITS PRESENT SALES CONTRACTS WITH CERRO SALES, WHICH HAS VALUABLE CONTACTS AND EXPERIENCE IN WORLD METAL MARKETS, IT WOULD SEEM LOGICAL FOR THE GOP TO CONTINUE THESE RELATIONSHIPS IF POSSIBLE, NOTWITHSTANDING THE POLITICAL ANIMUS THE GOP ORCHESTRATED DURING THE COURSE OF THE LAST SEVERAL YEARS TO JUSTIFY THE NATIONALIZATION OF CERRO'S ASSETS. FURTHER, THESE AGREEMENTS MAY ALSO REFLECT THE INDIRECT INFLUENCE OF PRIME MINISTER MORALES BERMUDEZ WHOM WE SUPPOSE WOULD GENERALLY FAVOR THIS KIND OF PRAGMATIC SETTLEMENT. THE EMBASSY IS PLEASED WITH THIS DEVELOPMENT, BUT THIS BEING PERU, WILL RESERVE SOME SKEPTICISM
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UNTIL THE CONTRACTS ARE ACTUALLY SIGNED.
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